

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JASON SCRIBNER,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

) Case No. SUSP-03-0015

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held in Conference Room 246 at the University of Washington's South Campus Center, on January 22, 2004. GERALD L. MORGEN, Vice Chair, reviewed the file and record and participated in the decision in this matter. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Jason Scribner was present and represented himself *pro se*. Jeffrey Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a 15-day suspension without pay for inappropriate behavior in the workplace, violation of the University Policy for Non-Discrimination and Affirmative Action, and neglect of duty. Respondent alleges that Appellant made inappropriate racial remarks to his supervisor in the presence of a new employee.

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 18, 2003.

2.2 Appellant became employed with the University of Washington on September 26, 1989, and became a Mail Carrier-Driver on January 3, 1991.

2.3 Appellant has been the subject of prior formal disciplinary action and has a history of prior counseling and corrective action. Appellant's personnel file included the following:

- On August 2, 2002, Appellant was reprimanded for inappropriate comments of a personal nature towards a female co-worker.
- On June 7, 2001, Appellant was suspended for 15 days without pay for inappropriate comments of a personal nature towards three female employees.
- On August 7, 1995, Appellant was reprimanded for inappropriate comments of a personal nature and touching a student employee.
- On April 12, 1994, Appellant was suspended for five days without pay for operating state vehicles without a valid driver's license.

2.4 The University of Washington's Non-Discrimination and Affirmative Action Policy prohibits discrimination against any person because of race, color, creed, religion, national origin, sex, age, marital status, disability, sexual orientation, or status as a disabled or Vietnam era veteran. The University of Washington is committed to having a diverse faculty, staff, and student body and recruits, hires, trains, and promotes individuals in all job classifications based upon their

1 qualifications and ability to do the job. The policy states that members of the University who
2 violate the policy are subject to disciplinary action up to and including termination of employment.

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4 2.5 On the morning of May 19, 2003, Steve Mounce, Program Support Supervisor, was
5 escorting a new employee, Eric Delfs, through the Mailing Services Department and introducing
6 him to the other employees. Appellant walked into the area, saw the new employee, and said to Mr.
7 Mounce, "I see they finally hired a white guy!" Mr. Mounce, offended and embarrassed by
8 Appellant's comment, said "Jason!" in an admonishing tone.

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10 2.6 Mr. Delfs credibly testified that he found Appellant's comment to be inappropriate.

11
12 2.7 A few minutes later, Appellant approached co-worker Marcos Solic-Bethancourt and asked,
13 "Did you hear what I just said to Steve [Mounce]?" Mr. Solic-Bethancourt replied he had not.
14 Appellant then repeated the comment first made to Mr. Mounce. Mr. Solic-Bethancourt was
15 offended by Appellant's comment.

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17 2.8 Later that day, Mr. Mounce met with Appellant and informed him that his inappropriate
18 comments must cease immediately. In addition, Mr. Mounce reported the incident to Bobbie Jo
19 Bay, Assistant Director.

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21 2.9 On May 26, 2003, Ms. Bay met with Appellant. Appellant admitted making the comment to
22 Mr. Mounce, but stated he meant it in a joking manner. Appellant did not appear to understand the
23 serious nature of his comment and expressed surprise at the attention the comment was being given
24 by others.

1 2.10 By letter dated June 5, 2003, Ms. Bay reported the incident to Eric Mosher, Director of
2 Publication Services, and recommended that Appellant be suspended for 15 days. By letter dated
3 June 13, 2003, Mr. Mosher informed Sandra Lier, Associate Vice President, that he concurred with
4 Ms. Bay's recommendation of a 15-day suspension.

5
6 2.11 Ms. Lier reviewed Appellant's responses to the allegations, his personnel file, which
7 included a history of previous corrective and disciplinary action for similar behavior, and the
8 University of Washington's Non-Discrimination and Affirmative Action Policy. Ms. Lier was
9 concerned about the impact Appellant's comment may have had on the new employee during his
10 first day on the job, as well as the department's morale. Furthermore, Ms. Lier was concerned that
11 Appellant repeated his comment to Mr. Solic-Bethancourt in spite of Mr. Mounce's admonishment
12 that it was inappropriate. Ms. Lier concluded that a 15-day suspension without pay was the
13 appropriate disciplinary action to get Appellant's attention, change his behavior, and prevent a
14 recurrence.

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16 2.12 By letter dated June 16, 2003, Ms. Lier informed Appellant of his 15-day suspension
17 effective June 17, 2003. Ms. Lier charged Appellant with inappropriate behavior in the workplace,
18 violation of the University Policy for Non-Discrimination and Affirmative Action, and neglect of
19 duty.

20 21 **III. ARGUMENTS OF THE PARTIES**

22 3.1 Respondent argues Appellant's comment to Mr. Mounce, especially in front of a new
23 employee, was highly inappropriate and potentially racially charged. Respondent asserts the
24 University's Non-Discrimination Policy clearly states that members of the University who violate
25 the policy are subject to disciplinary action up to and including termination. Respondent contends
26 Appellant had a history of making inappropriate comments in the workplace, and had been the

1 subject of informal and formal discipline for such behavior. Respondent asserts Appellant repeated
2 the comment to Mr. Solis-Bethancourt even after Mr. Mounce had admonished him and contends
3 the University has a right to have a workplace free from racial comments. Respondent argues
4 Appellant's comment implied that the University made hiring decisions based on race, and asks the
5 Board to uphold the sanction imposed of a 15-day suspension.

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7 3.2 Appellant argues the 15-day suspension was excessive and harsh in light of the context in
8 which it was said. Appellant asserts his comment was not intended to be disrespectful or harmful
9 toward others and was meant in a joking manner. Appellant contends he got along well with all his
10 diverse co-workers and did not project racial conflict in the workplace. Appellant argues he had a
11 tendency to joke frequently, and has always submitted letters of apology whenever he has offended
12 co-workers. Appellant asserts that Mr. Delfs and Mr. Solis-Bethancourt were not offended by his
13 comment on May 19, 2003. Appellant contends that the University has taught him others can
14 consider his words harmful, and he has learned his lesson. Appellant asks the Board to reduce his
15 suspension to fewer than 15 days.

16 17 **IV. CONCLUSIONS OF LAW**

18 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
19 herein.

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21 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
22 the charges upon which the action was initiated by proving by a preponderance of the credible
23 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
24 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
25 Corrections, PAB No. D82-084 (1983).

1 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
2 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
3 of Social & Health Services, PAB No. D86-119 (1987).

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5 4.4 Willful violation of published employing agency or institution or Personnel Resources
6 Board rules or regulations is established by facts showing the existence and publication of the rules
7 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
8 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

9
10 4.5 Respondent has met its burden of proving that Appellant made an offensive and
11 inappropriate comment to Mr. Mounce in the presence of Mr. Delfs, and then repeated the comment
12 to Mr. Solis-Bethancourt even though he had been previously admonished.

13
14 4.6 Respondent has met its burden of proof that Appellant willfully violated the University of
15 Washington's Non-Discrimination and Affirmative Action Policy and neglected his duty as an
16 employee to comply with all University policies. The policy is clear that discriminatory behavior is
17 unacceptable under any circumstances and will not be tolerated by the University. Appellant was
18 aware of the standards of conduct expected in the workplace, and he had a history of corrective and
19 disciplinary action for inappropriate comments. Nevertheless, Appellant again made an
20 inappropriate and offensive remark in disregard of these standards and thereby violated the
21 University's policy.

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23 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal
24 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
25 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
26 D93-163 (1995).

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2 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
3 the facts and circumstances, including the seriousness and circumstances of the offenses. The
4 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
5 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
6 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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8 4.9 We conclude that a 15-day suspension without pay is appropriate under the circumstances
9 presented here and was not too severe. Therefore, the appeal of Jason Scribner should be denied.

10
11 **V. ORDER**

12 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jason Scribner is denied.

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14 DATED this _____ day of _____, 2004.

15
16 WASHINGTON STATE PERSONNEL APPEALS BOARD

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18 _____
19 Walter T. Hubbard, Chair

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21 _____
22 Gerald L. Morgen, Vice Chair